

2026 OCTOBER | Employment

Can an employee sue for unfair termination after signing a discharge voucher?

Ngayu v Unilever Tea Kenya Limited (Civil Appeal E047 of 2022) [2026] KECA 2008 (KLR)

1. Background

- 1.1. On 2 October 2026, the Court of Appeal at Nakuru (Mativo, Kairaria and Maalim, JJA) delivered its judgment in [*Jacqueline Osoro Ngayu v Unilever Tea Kenya Limited \(Civil Appeal E047 of 2022\) \[2026\] KECA 2008 \(KLR\)*](#). The appeal turned on one pivotal issue: whether an employee who is paid his or her dues upon termination of employment and executes a discharge voucher accepting the amount paid in full and final settlement of those dues, can subsequently file suit against the same employer citing further claims in respect of the same employment relationship.
- 1.2. The Appellant was employed by the Respondent on 12th February 1997 as a clerk. On 1st March 2017, she was promoted to the position of Plant Manager. On 26th July 2019, she was served with a letter terminating her services on account of redundancy with effect from 31st August 2019, following a restructuring exercise.
- 1.3. Following the termination, the Appellant was paid terminal dues amounting to Kshs. 6,957,625/- and executed a Certificate of Discharge on 29th July 2019, acknowledging receipt of the dues and confirming that she had no further claims against the Respondent.
- 1.4. Subsequently, the Appellant instituted proceedings before the Employment and Labour Relations Court (ELRC), challenging the termination on grounds of unfair termination, discrimination and violation of the Employment Act, the Constitution and the rules of natural justice.
- 1.5. She claimed that the Respondent had no basis for declaring the position she held redundant because the position was still in existence and it had since been occupied by someone else. She also claimed that the Respondent's letter communicating the redundancy was unprocedural because it was not copied to the labour office as required by section 40 (1) of the Employment Act. In addition, she pleaded that she had no prior knowledge of the redundancy before receipt of the letter. She sought compensation based on section 49(1)(c) of the Employment Act, and a finding of discrimination.
- 1.6. In its judgement dated 20th January 2022, the ELRC (Makau J) found that the Respondent had failed to comply with the mandatory provisions of section 40 of the Employment Act, relating to redundancy. Nevertheless, the learned judge dismissed

the Appellant's claim on the ground that she had executed a discharge voucher.

2. Court of Appeal's Determination

- 1.7. Aggrieved by the decision, the Appellant lodged an appeal at the Court of Appeal on grounds that the discharge voucher could not override the Respondent's statutory obligations under section 40 of the Employment Act. She argued that the learned judge erred in finding the discharge voucher binding despite having concluded that her termination was unfair. She also argued that the violation of section 40 amounted to undue influence when she executed the discharge voucher. Further, she faulted the learned judge for failing to consider that there is no equality of bargaining strength between an employer and an employee after termination. Finally, she contended that the learned judge ought to have invoked section 119 of the Evidence Act, which allows a court to presume the existence of certain facts, and presumed that she signed the discharge voucher under duress, since the Respondent's breach of section 40 had been established.
- 1.8. On its part, the Respondent opposed the appeal on grounds that the discharge voucher fully discharged it from any further or other claims. It argued that the execution of a discharge voucher constitutes a contract if it is free of misrepresentation or fraud. The Respondent further argued that a party disputing a discharge voucher must adduce evidence to demonstrate that they did not sign it voluntarily, and that a court cannot re-write the terms of a contract entered into voluntarily. It maintained that once the trial court affirmed the validity of the discharge voucher, it was unnecessary to delve into the merits of the dispute.
- 2.1. The Court reiterated its settled position that an appellate court will not entertain new issues, grounds or claims that were not raised, argued and determined by the trial court. Parties are strictly bound by their pleadings and the case they ran at the trial court, and an appeal is not an avenue to re-engineer an entirely fresh theory of the case after losing at trial.
- 2.2. The Court held that the Appellant had not raised duress or bargaining power in her pleadings, witness statement or evidence before the trial court, and was introducing these issues for the first time on appeal. Duress is fundamentally an issue of fact that must be specifically pleaded and strictly proved by evidence. Since courts operate on the presumption that adult parties enter into contracts voluntarily, a claim that a party's free will was overborne by illegitimate pressure cannot be asserted in the abstract. It must be pleaded and substantiated through meticulous factual proof.
- 2.3. Therefore, the pivotal issue for consideration was whether an employee who is paid his or her dues upon termination of employment and executes a discharge voucher accepting the amount paid in full and final settlement of those dues, can subsequently file suit against the same employer citing further claims in respect of the same employment relationship.
- 2.4. The Court affirmed that a duly executed discharge voucher constitutes a valid and binding contract. Once a party voluntarily signs a voucher acknowledging receipt of

- funds in full and final settlement, they are estopped from raising further claims on the matter, unless they prove a recognized vitiating factor such as fraud, coercion or misrepresentation.
- 2.5. Discharge vouchers are viewed through the lens of the sanctity of contract (*pacta sunt servanda*) and the public policy imperative to bring finality to disputes. Unless an employee proves that the waiver was signed under duress, fraud or misrepresentation, the agreement validly extinguishes all existing and future statutory and contractual claims.
 - 2.6. Citing *Gbenga-Oluwatoye v Reckitt Benckiser South Africa (Pty) Limited and Another* [2016] ZACC 33, the Court held that full and final settlement clauses that explicitly waive the right to seek judicial redress are valid, lawful and consistent with public policy. Allowing a party to walk away from a contractually agreed waiver would undermine the critical utility of settling disputes out of court. A textually clear discharge voucher is therefore a legal compromise and a complete defence to any subsequent action based on the original dispute. Once the employee signs off, admitting that the payment satisfies all claims, the original obligations are extinguished.
 - 2.7. If the text of the settlement or discharge voucher explicitly bars any future labour or civil claims, the employee cannot argue that they only intended to settle a portion of their claims (such as immediate severance) while keeping the right to sue for unfair dismissal or outstanding bonuses.
 - 2.8. While the courts treat these waivers as watertight, they will allow an employee to validly sue only if the employee can satisfy a strict burden of proof regarding the following exceptions:
 - a) *Proven duress* – for example, if the employer threatened an unlawful act (e.g., physically threatening the employee or withholding legally vested statutory funds unless they signed), the discharge voucher will be declared voidable.
 - b) *Fraud/misrepresentation* – the contract is nullified due to lack of genuine consensus.
 - c) *Ambiguity in the text* – the court will interpret the ambiguity against the employer (*contra proferentem*), allowing claims to proceed.
 - 2.9. The Court added that financial pressure is not a recognised ground for setting aside a consent. The Court cited with approval the decision of the Court in *Filander v Overberg District Municipality* [2016] ZALCCT 21 and held that ordinary financial pressure or a desire for a quick payout does not amount to legal duress. The employee must prove that the employer made an unlawful threat that caused imminent fear. Simply stating “I signed because I needed the money” is legally insufficient to undo a signed discharge voucher.
 - 2.10. The Court found that the Appellant had not pleaded or proved duress, undue influence or any other vitiating factor. Accordingly, it found the appeal devoid of merit, dismissed it with costs to the Respondent and upheld the judgment of the ELRC.

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